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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,402	07/18/2003	Robert H. Mimplitch III	14489-009001	4137

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/622,402

Applicant(s)

MIMLITCH ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,5,13,14 and 24-43 is/are pending in the application.
- 4a) Of the above claim(s) 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,5,13,14,24,25,31,34-36,39 and 40 is/are rejected.
- 7) ☒ Claim(s) 26-30,32,33,37,38,41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

This final Office action is in response to (a) the amendment filed July 5, 2005 by which claims 1, 2, 4, 6-12, and 15-23 were canceled and claims 24-43 were added, and (b) the election filed February 17, 2006.

#### ***Election/Restriction***

Applicant's election with traverse of (a) Group I, i.e., claims 24, 3, 5, 13, 14, and 25-38, (b) species of Figures 5, 6A, and 6B, and (c) the subspecies of Figure 8, in the reply filed on February 17, 2006 is acknowledged. The traversal is on the ground(s) that (1) "The examiner has made no showing whatsoever that the inventions are independent", and (2) "Clearly, search and examination of the entire application can be made without serious burden" and "The examiner's assertion... has nothing to do with the requirements establishing that the groups are both independent and distinct and that search and examination of the entire application cannot be made without serious burden".

Regarding Groups I and II, this argument is found to be persuasive and hence, the claims of Group II, i.e., claims 39-42, will be examined with the elected claims of Group I.

*However*, for Groups I/II and III, this is not found persuasive because the structure claims in Groups I and II does not necessarily need to be assembled in the same way as in claim 43 and the process of using the structure of claim 43 can result in a different outcome. For these reasons the claim of Group III is considered to be independent from the claims of Groups I and II.

The requirement is still deemed proper and is therefore made FINAL.

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*Accordingly*, claim 43 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, species, and sub-species, there being no allowable generic or linking claim.

### ***Claim Objections***

Claims 27 and 34 are objected to because of the following informalities:

In line 1 of claim 27, it is suggested that "comprises" be changed to --defines--.

In line 6 of claim 34, it appears that "arts" should be changed to --arms--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25, 31, 34, 35, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the slot, slide member, and base, i.e., it is unclear where the slot is located.

Claim 31 is rendered by the language which makes the metes and bounds of the claim unclear.

The use of the term "coupled" in lines 4 and 5 of claim 34 renders the claim indefinite. *In particular*, it is unclear to what structure the distal ends are "coupled" to.

The term "uses" in claim 35 (see line 5, and "used" in line 5 and 7) and claim 40 (see line 3) is vague and/or indefinite. *Further*, it is unclear whether the structure following the term "uses" is being positively claimed. This rejection is also applicable to the use of "using" in claims 25.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 3, 5, 13, 14, 25, 35, 36, 39, and 40 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,974,037 (Haney '037).

Haney '037 discloses a device (see Figure 2) *for supporting a load (see Figure 1), such as electronic equipment, in a rack system* of a four post design comprising a base (27 and 47) having a support surface capable of supporting a load (see column 1, lines 25-35); a slide member (including 23, 24, and 25) coupled to the base (with 31, 33, and 29) and *operable to* translate relative to the base; *with respect to claim 3*, the equipment recited therein is not being positively claimed. Rather, the claim is requiring that the base be adapted to support such equipment. Since Haney '037 teaches use with electronic equipment, Haney '037 is considered to

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be "adapted to" support such equipment; *with respect to claim 5*, the slide (at 23) does not use ball bearings; *with respect to claims 13 and 14*, the base (at 47) includes means (at 51, 49) to accommodate loads of varying widths (i.e., right to left in Figure 2) which includes a varied orientation of the base with respect to the rack system, i.e., with one size the base elements (27 and 47) will be farther apart and with another size the base elements will be closer together; *with respect to claims 25 and 40*, the slide member (23) is coupled to the base (27) *using* at least one slot (33) which receives a fastener and which facilitates translation of the slide member; *with respect to claim 35*, the slide member (23-25) comprises a center slide member (23) and an outer slide member (24) coupled to the center slide (23) and operable to translate thereto, whereby translation *uses* a plurality of slots (at 33 in the base and the upper and lower channels define slots in the center and outer slide members) that are collinear (at 33) or coplanar (in the slide member); and *with respect to claim 36*, the base (27) comprises a support rail (unnumbered - horizontally extending portion, perpendicular to 27) on a lateral side of the support surface *adapted* to couple the base (27) to the slide member (23).

With respect to the recitation "operable to translate relative to the base" in line 4 of claim 24, it is noted that this is a functional recitation. When such a functional recitation is present in a claim, a reference need not explicitly disclose such a function in order to meet the claim language. *Rather*, a reference need only be capable of being used in such a way. *In the instant case*, until elements 29 are tightly fastened to element 31, the slide (23) is coupled to the base (through 31 and 29) while still being "operable" to translate thereto, thereby meeting the claim language.

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***Allowable Subject Matter***

Claims 26-30, 32, 33; 37-38; and 41-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and claims 31; and 34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment (filed July 5, 2005) adding new claims 24-43.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

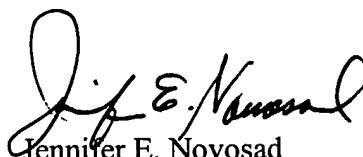
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

March 17, 2006